

Appl. No. 09/755,353  
Atty. Docket No. 8387&  
Amdt. dated 10/03/2005  
Reply to Office Action of 04/04/2005  
Customer No. 27752

## REMARKS

### I. Claim Status

Claims 1-30 are pending in the present application. New Claim 31 has been added by amendment. An additional claims fee for the added Claim 31 is calculated on the attached sheet..

Claim 1 has been amended to particularly point out that the step of collecting information can be done with a device. Antecedent basis can be found in the specification at page 7, lines 3-9.

Claims 1 and 20 have been amended to specify that the mock environment has an infrastructure to enable a consumer to interact with a product to be tested as in a corresponding real environment. Antecedent support can be found in the specification at page 4, lines 15 – 20.

Claim 31 has been newly added. Antecedent support can be found in the specification at page 7, lines 3-9.

Entry of these amendments is respectfully requested. It is believed these amendments and addition of the new claim do not involve any introduction of new matter, address the concerns raised in the pending Office Action, and place the claims in better form for appeal.

### II. Rejection Under 35 USC §101

The Office Action States that Claims 1-19 are rejected under 35 USC §101 because the claimed invention is directed to non-statutory subject matter". Specifically the Office Action indicates that the subject matter claimed is merely an abstract idea that does not product a useful, tangible, concrete result.

Applicants respectfully request reconsideration of this rejection in view of the amendment to Claim 1. By providing that the "step of collecting information during testing of said product" can be accomplished with a "device", Claim 1 clearly and expressly provides a tangible, concrete result. As further specified in Claim 31, this can be implemented through a device such as an audio or video device, for recording the

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activity of the consumer participating in the test, or via the use of other devices, such as sensors, to measure quantitative data (e.g., to measure removal of products from shelves).

It is not necessary for a claimed invention, even a business method invention, to involve computer means or equivalents. An invention can satisfy the statutory requirements of 35 USC §101 even if it is carried out in the human mind, or with the aid of the human mind, so long as it produces a useful, concrete, and tangible result. *In re Musgrave*, 431 F.2d 882, 893, 167 USPQ 280, 289 (CCPA 1970). In view of the above, Applicants believe that the invention, as claimed, does in fact product a useful, tangible, and concrete result.

Applicants respectfully maintain that Claims 1-19 and 31 satisfy the statutory requirements of 35 USC §101.

**III. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 1-4, 6-8, 12-16, and 19**

Claims 1-4, 6-8, 12-16, and 19 have been rejected under 35 USC §102(b) and anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Article 3/99 "New Uses That Revitalize Old Brands" by Wansink, et al. (hereinafter referred to as "Wansink"). Applicants respectfully traverse these rejections and request reconsideration of the amended claims.

Claim 1 has been amended to more particularly and distinctly point out that the mock environment claimed by Applicants has an infrastructure sufficient to enable a consumer to interact with the product to be tested in a manner corresponding to how the consumer would interact with the product in a corresponding real environment. For example, if the product to be tested is a laundry detergent and the real environment is a home containing an automatic washing machine, the infrastructure of the mock environment could include a functioning washing machine (or at least a washing machine that appeared to be functioning to the consumer even if it was controlled from outside of the mock environment) to enable the consumer to interact with the product in a manner similar to how he or she would interact with the product in a real home. Similarly, as disclosed at page 4, lines 19-26 of the specification, depending upon the desired product and context to be tested, the infrastructure could include functioning high tech capabilities such as broadband internet access, etc.

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The methodology disclosed in Wansink does not specify testing products in a manner involving interaction with the product in the same way as would occur in a corresponding real environment. The methodology disclosed in Wansink provides, at page 3, second full paragraph, that "(T)he consumer is asked to tour the environment and articulate uses for the brand being tested." The consumer is not asked to actually *test the product in the simulated home*. Referring to Wansink at page 3, second full paragraph, line 13, the top ideas from the laboratory home testing next "move on" to "concept testing". Concept testing is defined earlier in the article on page 2, last paragraph of the page. Nowhere in the Wansink reference is it disclosed or suggested to do actual product use tests in the laboratory home.

Further, although the Wansink reference discloses the general concept of a simulated environment or laboratory home, it does not specify that the home includes an infrastructure that enables the product to be tested in a way so as to enable the consumer to interact with the product as he or she would if using the product in a real home. Thus, even if the consumer had been asked to do something more than tour the facility and articulate new uses, Wansink does not provide the infrastructure necessary to enable the consumer to interact it the same manner as he or she would use it in a corresponding real environment.

Accordingly, it is respectfully submitted that Wansink does not either anticipate or make the above referenced claims under 35 USC §§ 102 or 103.

#### IV. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 5, 9-11, and 17-18

Dependent Claims 5, 9-11, and 17-18 (all dependent directly or indirectly upon Claim 1) have been rejected under 35 USC §103 as being obvious over Wansink.

Applicants respectfully submit that these claims are unobvious over Wansink for the same reasons stated above with respect to Claim 1.

#### V. Rejection Under 35 USC §102 and/or 35 USC §103(a) of Claims 20-30

Claims 20-30 have been rejected under 35 USC 102(b) and anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Wansink.

Applicants respectfully traverse this rejection. Although the Wansink reference discloses the general concept of a simulated environment or laboratory home, it does not

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specify that the home includes an infrastructure that enables the product to be tested in a way so as to enable the consumer to interact with the product as he or she would if using the product in a real home. Wansink does not provide the infrastructure necessary to enable the consumer to interact it the same manner as he or she would use it in a corresponding real environment.

#### VII. Conclusion

In light of the above remarks, it is requested that the Examiner enter the above amendments, and to reconsider and withdraw the rejections of Claims 1-30.

Respectfully Submitted,

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